

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2342 OF 2006
WITH
NOTICE OF MOTION NO. OF 2006

Asset Reconstruction Company (India)Ltd. Petitioner

vs.

Appellate Authority for Industrial
and Financial Reconstruction & ors.

Respondents

And

Commissioner of Sales Tax, Mah.State.

Applicant

Dr.Virendra Tulzapurkar, senior counsel with Mr.Prateek
Seksaria and Mr.Arun Siwach i/b.M/s.Amarchand &
Mangaldas & Suresh A. Shroff & Co. for the
petitioners.

Mr.Yashodhan Sakhare i/b.Mr.S. Karpe for the respondent
no.6.

Ms.Geeta Shastri, AGP and Mr.A.A.Kumbhkoni, Associate
Advocate General for the applicant in notice of motion.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 26th September, 2006

P.C.

Leave under rule 147 of the High Court (Original
Side) Rules, 1980 is granted to the applicant to take
out the notice of motion in terms of draft notice of
motion handed in. Notice of motion made returnable
forthwith.

2. Notice was directed to be served on the company.
That has been sent at its registered office. Similarly
counsel for the petitioner produces communication

addressed to the company by speed post.

3. Considering the above, rule. Heard forthwith.

4. It is not necessary for us to set out the facts in extenso for the order to be passed.

. ICICI Bank was a secured creditor of respondent no.2. They had served a notice on respondent no.2 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'Securitisation Act') on 3.1.2003. ICICI Bank have assigned their rights in favour of the petitioner on 30.6.2004. The petitioner after taking consent of SICOM and Canara Bank proceeded to move under section 13(4) of the Securitisation Act on 2.2.2005. Proceedings were also pending before BIFR. Consequent to action being taken under the provisions of the Securitisation Act, BIFR held that proceedings stood abated. The company aggrieved by that order preferred an appeal before AAIFR. The Appellate Authority accepted the contention of the petitioners that the statutory requirement under the Securitisation Act had been met but proceeded on the footing that the company was not heard and as such remanded the matter back to BIFR by order dated 15.6.2006. It is this order which is the subject matter of the present petition.

5. After the Appellate Authority held that the petitioner had complied with the requirements of the provisions of the Securitisation Act then by operation of law the proceedings would abate, as held by BIFR, in these circumstances, the question of hearing the company-respondent no.2 would really not arise. In these circumstances, the impugned order is without jurisdiction and is liable to be set aside.

6. The motion has been taken out by the Commissioner of sales Tax, Maharashtra State contending that they are secured creditors and therefore have priority over all creditors and they should be entitled to attach the property and sell the same. It will be open to the applicants if aggrieved by the action taken under Section 13(4) of Securitisation Act to prefer an appeal against that order. Even otherwise, in so far as the sale is concerned, whatever rights the Intervenor may have including their contention that they are secured creditors and have priority over all the petitioners can be gone into by DRT. As the applicants have a remedy at law, in our opinion the question of granting any relief in the application would not arise.

7. In the light of that, the petition is made absolute in terms of payer (a).

8. The draft notice of motion is also stands disposed of accordingly.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)